

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MENDOTA INSURANCE COMPANY

RESPONDENT,

**v.
DIANE LAWSON, ET AL.**

APPELLANTS.

DOCKET NUMBER WD77483 Consolidated with WD77484

DATE: March 24, 2015

Appeal From:

Jackson County Circuit Court
The Honorable Justine E. Del Muro, Judge

Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, James E. Welsh, Judge and Gary D. Witt, Judge

Attorneys:

Ellen J. Brooke, St. Louis, MO, for respondent.

Kirk R. Presley and James H. Thompson, Jr., Kansas City, MO, for sappellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

MENDOTA INSURANCE COMPANY,

RESPONDENT,

v.

DIANE LAWSON, ET AL.,

APPELLANTS.

No. WD77483 Consolidated with WD77484

Jackson County

Before Division Three: Victor C. Howard, Presiding Judge, James E. Welsh, Judge and Gary D. Witt, Judge

Diane Lawson and Heather Burlingame appeal the trial court's grant of summary judgment in favor of Mendota Insurance Company arising out of an action for wrongful death. At issue is the interpretation of an automobile insurance policy between Lawson's deceased husband and Mendota. Lawson and Burlingame assert three points on appeal. First, they argue that the policy's owned-auto exclusion violates the Missouri Motor Vehicle Financial Responsibility Law. Second, they argue that the policy is ambiguous because when the insuring agreement and the owned-auto exclusion are considered together, the policy purports to provide coverage to the named insured for use of the auto but then attempts to take away coverage. Third, they argue that the trial court erred in dismissing Lawson's counter-claim because it states a claim upon which relief can be granted.

AFFIRMED

Division Three holds:

- (1) Lawson and Burlingame's argument that the exclusion in question violates the Missouri Vehicle Financial Responsibility Law was recently disposed of in *Dutton v. Am. Family Mutual Ins. Co.*, No. SC 94075, 2015 WL 468715 (Mo. banc Feb. 3, 2015).
- (2) While Lawson and Burlingame's argue that the policy exclusion is ambiguous, they offer only broad arguments and do not direct us to any particular words or phrase of the policy to examine. We therefore hold that they have failed to establish that the exclusion is unclear or ambiguous.
- (3) Because the policy excludes coverage, any argument for equitable garnishment must fail. Burlingame therefore failed to state a claim upon which relief can be granted.

Opinion by Gary D. Witt, Judge

March 24, 2015

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